

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE
COURT NO. 11**

**SUIT NO: FCT/HC/M/8405/2020
FJ/14/2020**

DATE: 15-09-2021.

BETWEEN:

**BARR. GABRIEL ALLAHNANA ONU
(for himself and on behalf of the family
of the Onu Onoja Ai-Okoko of Adum Otukpa,
Ogbadibo LGA Benue State.)JUDGMENT CREDITOR/APPLICANT**

AND

OGBADIBO LOCAL GOVERNMENT COUNCIL... J/DEBTOR/RESPONDENT

- 1. ACCESS BANK PLC**
- 2. ECOBANK PLC**
- 3. FIDELITY BANK PLC**
- 4. FIRST BANK OF NIGERIA LIMITED**
- 5. FIRST CITY MONUMENT BANK (FCMB) LTD**
- 6. GUARANTY TRUST BANK PLC**
- 7. HERITAGE BANK PLC**
- 8. KEYSTONE BANK PLC**
- 9. POLARIS BANK PLC**
- 10. STANBIC IBTC PLC**
- 11. STERLING BANK PLC**
- 12. UNION BANK OF NIGERIA (UBN) PLC**
- 13. UNITED BANK FOR AFRICA (UBA) PLC**
- 14. UNITY BANK PLC**
- 15. ZENITH BANK PLC**

(ALL OF ABUJA AND MAKURDI)

GARNISHEES

JUDGMENT
(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

In this garnishee proceeding which started on the 22/7/20 when the judgment of Benue State High Court was registered on application of the Judgment Creditor and Order *Nisi* granted against 15 banks. They were to show cause why the Order *Nisi* would not be made absolute. And the matter was adjourned to 20/8/20 in accordance with the provision of **Sheriff and Civil Process Act**.

Suddenly, an application emanated from Solicitor-General Benue State with Motion on Notice Number M/9068/2020 praying the Court as an interested party to set aside the Order *Nisi* earlier made by the Court.

Ordinarily, this business of the court this morning would have been to consider the issue of whether the Order *Nisi* should be made absolute or not? However, as it is now, the merit/appropriateness of this Motion on Notice would be considered first before proceeding with the garnishee proceedings.

Mr. S. C. Egede Esq. (Solicitor-General of Benue State) while moving the application in Court said the Motion is dated 10/8/20 but filed on the 11/8/20. It seeks for a sole relief to wit:

An Order setting aside and discharging the garnishee Order *Nisi* attaching the Benue State Joint Local Governments Account No: 5030058730 with Fidelity Bank Plc.

The grounds for this application are as follows:

- (a) That the attached Fidelity Bank Plc Account No: 5030058730 is a special account maintained by the Applicants called “State Joint Local Government Account” into which is paid all allocations to ALL the Local Government Councils in Benue State from the Federation Account and from the Government of Benue State pursuant to **Section 162(6) of the Constitution** of the Federal Republic of Nigeria.
- (b) That the said account is under the custody and control of the 1st Applicant on behalf of the Local Government Councils in Benue State.
- (c) That the said attached account does not belong to the Judgment debtor.
- (d) That the execution of the Judgment on the said accounts is neither valid nor lawful.

In support of this Motion is an affidavit of 6 paragraphs, Exhibits A and B and a written address. Mr. Egede submitted that there is no counter-affidavit which means that all the facts deposed to therein are not controverted.

He finally urged the Court to grant this application.

On his part in opposition to the grant of this application, the Judgment Creditor/Respondent learned Counsel, Mr. Okpale argued that the application is incompetent because the applicants are not parties to this garnishee proceedings. He contended further that in this proceeding, the parties are specified and what they should file is also specified. The parties are Judgment

Creditor, Judgment Debtor and Garnishees. He submitted that the applicants are neither of these parties thereby making their application incompetent.

In his further submission, he said by the provision of **Section 87 of the Sheriff and Civil Process Act**, where an account is shown to belong to a 3rd party, it is the garnishee that should say so. He cited the case of **AJAKUTA STEEL COMPANY BOARD OF TRUSTEES OF STAFF PENSION SCHEME VS. ROLE & ORS. (2012) LPELR – 7884 (CA)**.

Also, he referred to the Ruling of the Court where a similar application was dismissed in the case of **CLEAR CUT OIL & GAS VS. MUTUAL COMMITMENT (Suit No. FCT/HC/M/8493/20** where the Court held that a 3rd party cannot be heard without an application for joinder in garnishee proceedings. He made reference to the case of **JAMES ABU VS. BENUE STATE GOVERNMENT (Suit No: WICN/MKD/52/2019**, where the 3rd party applied to be joined and the Court said No.

Furthermore, he submitted strongly that a Joint account can be attached where the money belonging to the Judgment Debtor in that joint account is identifiable. Here, he relied heavily on the decision of the Court of Appeal in the case of **CBN VS. UBANA & ORS. (2016) LPELR – 40366 (CA)** followed by Hon. Justice T. A. Igoche of Benue State High Court in the case of **HON. ANTA IGBAATO VS. GWER WEST LOCAL GOVERNMENT MHC/4370M/2016** delivered on 1st day of November, 2016.

He finally argued the Court to dismiss this application and make the Order *Nisi* absolute against the 3rd Garnishee Bank.

Now, I think it would be apposite to determine the merit of this application asking the Court to set aside its Order *Nisi* made on the 22nd July, 2020.

Mr. Simon Egede in his written address in support of his application submitted two issues for determination to wit:

- (a) Whether the execution of the Judgment by Judgment Creditor/Respondent by garnisheeing of the “Benue State Joint Local Government Account” is lawful and valid?
- (b) Whether the garnishee proceedings undertaken by the Judgment Creditor without first obtaining the consent of the Attorney General of Benue State is lawful and valid?

On the 9/9/20, while moving the application in Court, Mr. Egede told the Court that they are withdrawing or abandoning the second issue framed for reason not disclosed.

Arguing the sole issue, he submitted that unless and until a Judgment of a Court of competent jurisdiction is set aside, it remains valid and enforceable and must be obeyed. However, he submitted that no person is to be adversely affected by a Judgment in an action to which he was not a party. For all these submissions, he cited the cases of **KUBOR VS. DICKSON (2013) ALL FWLR (PT. 676) 292; AKINSANYA VS. A.G.F & ORS (2013) ALL FWLR (PT. 688) 941.**

He argued further that there can only be two parties to enforcement of a Judgment, viz, the Judgment Creditor and the Judgment Debtor, which in this case is **OGBADIBO LOCAL GOVERNMENT COUNCIL**. It is therefore, unlawful and invalid to execute the Judgment of this Honourable Court on the accounts maintained by Benue State Government which was never a party to the action. He submitted that it would amount to grave injustice to satisfy the debt of the Judgment Debtor from the joint account of all the 23 Local Government Councils in Benue State. He referred the Court to the cases of **I.G.P. VS. ANDREW (2014) ALL**

FWLR (PT. 729) 1194; LAJIBAM AUTOS VS. UBA PLC (2014) ALL FWLR (PT. 739) 1080.

Finally, he urged the Court to set aside the Order *Nisi* made as it was an Order against the Benue State Government Bank Account when it was not a party to the action and the subsequent Judgment.

Opposing the grant of this application, Mr. Okpale, the learned Counsel to the Judgment Creditor/Respondent formulated two issues for consideration in his written address. The issues are:

- (1) Whether the application is incompetent and liable to be struck out, this been a garnishee proceeding, of which the applicants are not parties thereto competent to file any process therein.
- (2) Whether the Applicants have made out a case to be entitled to the grant of an Order setting aside the Order *Nisi*.

I must point out at this juncture that the two issues can be subsumed and treated as one. I feel free to do so.

It is the submission of Mr. Okpale that garnishee proceeding is *sui generis* and has specific rules and regulations governing it, with parties thereto specifically prescribed by statute. By provisions of **Section 83(1) of the Sheriff and Civil Process Act** and **Order VIII Rules 7, 8 and 9 of the Judgment Enforcement Rules**, at the stage of *ex-parte* application, the parties to the garnishee proceeding are the Judgment Creditor and/or the Garnishees. After the Order is granted and served on the garnishee, thereafter the garnishees is/are expected to appear in Court and show cause why the Order *Nisi* should not be made absolute.

On the return date, the parties to the proceeding who are entitled to be heard and competent to file processes are the Judgment Creditor, Judgment Debtor and the Garnishees. Indeed, the Judgment Debtor is a nominal party and can only be heard, where he observed some irregularities in the proceeding leading to the Order *Nisi*.

Aside that, the Judgment Debtor is not entitled to be heard and/or file any process in the proceeding. For all these submissions he cited the case of **FIDELITY BANK PLC VS. OKWUOWULU & ANOR (2012) LPELR – 8497 (CA)**.

He submitted further that, in the circumstance of this case, the applicants not been parties to the garnishee proceedings and not been the persons to whom the Order *Nisi* is directed to appear in Court to show cause, the application they have filed is incompetent and liable to be struck out. He referred to the case of **AJAOKUTA (Supra)**.

We must not forget that out of the two issues framed by the learned Solicitor General of Benue State/Applicants' Counsel, he has abandoned the one that has to do with obtaining the consent of the Attorney General of Benue State. What is left is the issue of "Whether the execution of the Judgment by Judgment Creditor/Respondent by garnishee of the Benue State Joint Local Government Account" is lawful and valid and should not be set aside?

On this issue, Mr. Egede relied on **Section 162 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**. It is important to examine that provision.

Section 162 (6) provides:

“Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.”

Section 162 (7) says:

“Each State shall pay to Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.”

Section 162 (8) provides thus:

“The amount standing to the Credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”

What do I find in this case?

With due respect to the learned Solicitor-General of Benue State, these provisions of Constitution are in my humble opinion does not support his argument so as to justify whether the execution of the Judgment by garnishing State Joint Local Government Account is wrongful in order to warrant setting aside the Order *Nisi* earlier made.

On this issue, I agree with Mr. Okpale, learned Counsel to the Judgment Creditor/Respondent who submitted brilliantly that by the position of the law and decided authorities, the Applicants have not made out a case for the setting aside of the Order *Nisi*.

The Supreme Court in the case of **CBN VS. INTERSTELLA COMMUNICATIONS LTD & ORS. (2017) LPELR – 43940 (SC)** held that funds in the hands of Central Bank of Nigeria are not in the hands of a public officer, as the Central Banker, is only a Banker to the Federal Government and their relationship is that of a Banker and Customer, not requiring the consent before money in her custody can be attached in a garnishee proceeding. See **CBN VS. SHUAIBU DOMA (2018) LPELR 45639 (CA); CBN VS. ZENITH BANK PLC (2019) LPELR.**

On the authority of **CBN VS. CHIEF OBLA UBANA & ORS (2016) LPELR –40366 (CA)**, Mr. Okpale submitted that the Judgment Creditor/Respondent is entitled to attach the share of the Judgment Debtor in the joint account. I agree.

The question that has agitated my mind now is whether this application is competent or not? I do not prepare to beat about the bush. I will rather confront this issue headlong.

In garnishee proceeding, the law requires that the Judgment Debtor be served and even at that he has no part in the proceedings. It has been settled that garnishee proceedings are distinct from the proceedings leading to the Judgment debt. See **STAR DEEPWATER PETROLEUM LTD & ORS VS. A.I.C. LTD & ORS (2010) LPELR 9165 (CA)** where the Court held as follows:

“It is trite law, that garnishee proceedings though incidental to the Judgment pronouncing the debt owed, the Judgment debtor is not a necessary

party to the said proceedings.” See also **P.P.M.C VS. DELPHI PETROLEUM INCORPORATED (2005) 1 NWLR (PT. 928) 458.**

The Judgment Debtor is only served with the Order *Nisi* being a requirement of law and commonsensical. See **RE: DIAMONDBANK LTD (2002) 17 NWLR (PT. 795) 120.** It is for the above reasons therefore, that the applicants are not permitted in this garnishee proceeding to file any process and whatever process filed by them are incompetent and liable to be struck out.

This Motion on Notice M/9068/2020 filed by **BUREAU FOR LOCAL GOVERNMENT AND CHIEFTANCY AFFAIRS, BENUE STATE AND HON. ATTORNEY-GENERAL OF BENUE STATE** is hereby struck out for want of competence and merit.

Now, the attention of the Court could be shifted to focus on the main issue here. And that is whether or not to make the Order *Nisi* granted on the 22nd July, 2020 absolute or not. The question to be asked is this? Whether monies accruing to a Local Government Council in the Federation Account from its monthly share of Federal Revenue can be subject of a garnishee order against the Bank where such an account is domiciled?

This question is derivable from the Order *Nisi* granted which says thus:

“An Order Nisi attaching the funds of the Judgment Debtor with the 3rd and 4th Garnishees in the accounts No. 5030058730 and 2017241513 respectively in the Title: Benue State Local Government Joint Allocation Account Committee (JAAC), into which the

statutory monthly allocation of the Judgment Debtor/Respondent is paid from the Federation Account and Account of the Judgment Debtor with all and/or any of the Garnishee in the name and title of **OGBADIBO LOCAL GOVERNMENT COUNCIL** in which the statutory monthly allocation of the Judgment Debtor is paid from either the account No. 5030058730 and/or 2017241513 respectively with the 3rd and 4th Garnishees herein referred and/or her internally generated revenue, for the satisfaction of the total Judgment debt of N223,333,333.33 (being the Judgment debt of N200,000,000.00 and 5% interest of N223,333,333.33 from date of Judgment to date) as per the Judgment of the Benue State High Court dated the 8th day of March, 2018 and registered in this Honourable Court.”

The 4th Garnishee Bank, which is First Bank Plc in its affidavit to show cause has exhibited the various accounts maintained by the Judgment debtor with the balances in each account. See paragraph 3b of its affidavit to show cause dated and filed on the 3rd of August, 2020.

In paragraph 3d, it makes it clear that all the balance in the five accounts is less than Forty-three thousand Naira being the Solicitor fee already lien in favour of the 4th garnishee’s Solicitor.

The accounts with the balance are:

(1)	2034752917	-	N163,066.33
(2)	2035080051	-	No.00
(3)	3143673135	-	No.00
(4)	3011174885	-	N136,167.42
(5)	2024640325	-	<u>N117,178.00</u>
			N410,411.75
			- <u>N43,000.75</u>
			<u>N367,411.75</u>

Therefore, the sum of N367,411.75 being the balance in those five accounts are liable to be garnished. And the Order *Nisi* made absolute in relation to those accounts and made payable to the Judgment Creditor.

The 3rd garnishee Bank, Fidelity Bank Plc, where the joint account is domiciled told the Court that the account is used as collateral to obtain a Credit Facility which the Judgment Debtor benefited the total sum of N152,173,913.04 (One Hundred and Fifty Two Million, One Hundred and SeventyThree Thousand, Nine Hundred and Thirteen Naira and Four Kobo only. See paragraphs 4 (e) and (f) of its affidavit to show cause.

Mr. Okpale of learned Counsel to the Judgment Creditor submitted that the Judgment Creditor is entitled to attach the share of the Judgment Debtor in the joint account. He relied heavily on the authority of **CBN VS. UBANA & ORS (2016) LPELR – 40366 (CA)** and **Unreported case of HON. ANTA IGBATOO VS. GWER-WEST & ORS** decided by Benue State High Court on the 1st day of November, 2016.

The law is settled that the primary duty of a Garnishee in garnishee proceedings is for the garnishee to appear in Court upon receipt of the Order *Nisi*, and show cause why the funds in the Judgment Debtor's account should not be paid over to the Judgment

Creditor in satisfaction of the Judgment debt. This is done by filing an affidavit to show cause with all the relevant documents, disclosing the true picture, status or standing of the Judgment Debtor's account at the time of the service of the Garnishee Order *Nisi* on it. That is the import of **Section 83 of the Sheriff and Civil Process Act CAP 56, LFN 2004**, See **HERITAGE BANK LIMITED VS. INTERLAGOS OIL LIMITED & ANOR (2018) LPELR – 44801 (CA)**.

In the case of **CBN VS. UBANA (Supra)** which is appeal emanated from the Federal Capital Territory High Court Abuja presided over by Honourable Justice Chizoba N. Orji. It was established that a Federal account exists with the Garnishee out of which monthly disbursements are made to each State including Cross River State Government. It was on this fact that the Order *Nisi* was made absolute with regards to the monies in the said Federation account which are accruing to the government of Cross River.

In the instant case, the garnishee agreed that the account exists with them but is a joint account titled Benue State Local Government Joint Allocation Account Committee (JAAC). See paragraph 4 (c).

What is agitating my mind now is that, does it mean that all the shares that accrued to the Judgment Debtor every month is channelled towards the satisfaction of the Credit granted by the garnishee? When the duration of the Credit facility is 30 months. Are they saying that no amount of money remains in that account to the Credit of the Judgment Debtor? All these questions are begging for answers.

The garnishee (Fidelity) does not provide the relevant documents that would reveal all these answers for the Court to be satisfied that the Order *Nisi* should not be made absolute.

I think it is of paramount importance for the garnishee to reveal the sum of money that accrues to the Judgment Debtor's account every month in order to discharge the onus placed on the garnishee by law even though they are claiming right of set off. Having removed the amounts they are entitled to from the account every month, are they saying there is no money left in the account? All these are duties placed on them by law.

In the case of **ABURIME VS. UBA PLC & ORS. (2018) LPELR – 44769 (CA)**, Oniyangi JCA held thus:

“.....it is not the business of the garnishee to play the role of an advocate for a Judgment Debtor by acts that would amount to shield or protect the money of the Judgment debtor. At the time an Order Nisi is made against a given bank or financial institution, the duty of secrecy owed by the bank to his Customer who is the Judgment Debtor is broken. The bank becomes duty bound to disclose to the Court the State of the named account of the Judgment Debtor.”

Furthermore, in the case of **HERITAGE BANK PLC (Supra) PER Abdu Aboki JCA** (as he then was) held thus:

“In the affidavit to show cause that was placed before the Trial Court, the 2nd Respondent had twelve accounts with the Appellant and that the Judgment Debtor is heavily indebted to the Appellant. In proof of these depositions, the Appellant exhibited eleven accounts.

There is nothing on the face of the exhibits to back up these depositions, and to entitle the Appellant to a right of set off, over the monies in the 2nd Respondent's accounts. On the contrary, what the annexures showed was that the 2nd Respondent had sufficient credit in its Corporate Accounts with the Appellant to satisfy the Judgment debt. In order to substantiate its depositions, the submission of the Appellant was that during the oral submission, it informed the Trial Court that the monies in the project accounts are APG sums granted by the Appellant and therefore applied for more time to enable it file all documents related to the APG sum but the application was refused by the Trial Court."

The Appellant while complaining a denial of its fair hearing, the Appellant Court held as follows:

".....the affidavit to show cause must contain not just an averment denying of liability, but such denial of liability must be amply supported by documentary evidence. That is not the case, in the instant appeal. In the light of the above, it is my view that the decision of the Trial Court was not based on a wrong legal consideration, and did not occasion a denial of the Appellant's right to fair hearing."

In the light of the above and the fact that no statement of account was exhibited apart from the document of indebtedness of the Judgment Debtor, I hold that the third garnishee bank (Fidelity Bank) has failed to comply with the provision of **Section 83 of the Sheriffs and Civil Process Act**. I therefore, make the Order *Nisi* made by this Court on the 22nd July, 2020 against the 3rd garnishee bank (Fidelity) absolute.

The other garnishee banks are hereby discharged from this garnishee proceedings having satisfactorily showed cause before the Court.

That is the Judgment of this Court.

SIGNED

Suleiman B. Belgore

(Judge) 15-9-21.